

## DEPARTMENT OF FINANCE BILL ANALYSIS

**AMENDMENT DATE:** April 13, 2009  
**POSITION:** Neutral

**BILL NUMBER:** SB 220  
**AUTHOR:** L. Yee  
**RELATED BILLS:** SB 1505 (2008)

### **BILL SUMMARY: Whistleblower Protection**

This bill would make several amendments to the California Whistleblower Protection Act that would expedite the whistleblower hearing process, and authorize the State Personnel Board (SPB) to award reasonable attorney's fees to successful complainants.

### **FISCAL SUMMARY**

SPB indicates that the elimination of the duplicative "notice of findings" process and authority to issue right-to-sue notices would result in modest (indeterminate) administrative cost savings and expedite the hearing process. The ability for complainants to seek right-to-sue notices early in the process would not increase costs to the courts as these complainants would most likely already seek relief through the courts after SPB makes its determination. Since none of the 60 annual whistle blower complaints were ruled in favor of the complainant in the past two years, we estimate that there would only be minor annual costs to various state departments if the SPB is allowed to award reasonable attorney's fees to successful complainants.

The author's office and SPB assert that there may be cost savings realized if attorney's fees are awarded during SPB's administrative hearing as some cases would no longer go through the courts. This argument is flawed as cases that move up to the courts do so primarily to seek punitive damages. In addition, attorney's fees awarded in the courts do not cover attorney's fees generated during the administrative hearing process.

Any local government costs resulting from the mandate in this bill would not be state-reimbursable because the mandate only involves the definition of a crime or the penalty for conviction of a crime.

### **COMMENTS**

The Department of Finance takes a neutral position on this bill. The intent of this bill is to expedite the whistleblower process for complainants and provide reimbursements for attorney's fees to successful complainants.

Existing law provides state employees protection from retaliation from their employer when reporting fraud, waste, or abuse. SPB currently has 70 days from receipt of a complaint to issue a decision, however currently the process generally takes longer.

This bill would:

- Authorize SPB to, upon a complainants request, issue right to sue letters within ten days of a complaint.
- Authorize SPB to place a successful complainant into a vacant position they are otherwise qualified for.
- Authorize SPB to issue reasonable attorney's fees to successful complainants.

Analyst/Principal (0932) K. Martone	Date	Program Budget Manager Diana Ducay	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

<b>BILL ANALYSIS</b>	Form DF-43 (Rev 03/95 Buff)
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**BILL ANALYSIS/ENROLLED BILL REPORT--(CONTINUED)****Form DF-43****AUTHOR****AMENDMENT DATE****BILL NUMBER**

L. Yee

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SB 220

- Require the administrative law judge to determine which party has the burden of proof earlier in the evidentiary process to eliminate the protracted "notice of findings" process.
- Authorize the administrative law judge to issue an order to prevent any named party from being embarrassed, delayed, or put to unnecessary expense.
- Apply whistle blower protection to former employees, as specified.
- Make other technical clarifying changes.

Code/Department Agency or Revenue Type	SO	(Fiscal Impact by Fiscal Year)							
	LA	(Dollars in Thousands)							
	CO	PROP							Fund
	RV	98	FC	2008-2009	FC	2009-2010	FC	2010-2011	Code
9901/Var Depts	SO	No	-----	No/Minor	Fiscal Impact	-----			0001
1880/SPB	SO	No	-----	No/Minor	Fiscal Impact	-----			0001